

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Federal-State Joint Board on  
Universal Service

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CC Dkt. No. 96-45

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COMMENTS OF OMNIPPOINT COMMUNICATIONS, INC.

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**COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.**

**Introduction and Summary**

Omnipoint Communications, Inc. ("Omnipoint"),<sup>1</sup> by its attorneys, hereby submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>2</sup> Omnipoint urges the Commission to remain cognizant of the market and operational distinctions between traditional wireline and emerging wireless providers when adopting contribution mechanisms for commercial mobile radio service ("CMRS") providers, and when determining specific offerings eligible to receive universal service support. Omnipoint respectfully requests that the Commission adopt as permanent the interim assumption that interstate revenues account for 15 percent of a wireless provider's overall revenues. In addition, the Commission should ensure competitive neutrality between service providers by allowing wireless carriers to provide market-oriented service offerings which would be eligible for universal service support. To this end, Omnipoint provides comments on what services the

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<sup>1</sup> Omnipoint Communications, Inc. currently offers broadband PCS service on Block A in the New York MTA. Affiliates of Omnipoint Communications, Inc. hold 121 broadband PCS licenses throughout the United States.

<sup>2</sup> Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278, CC Dkt. No. 96-45 (rel. Oct. 26, 1998) ("FNPRM").

Commission and the States should allow wireless providers to offer as eligible for universal service funding.

### Discussion

#### **I. The Commission Should Adopt As Permanent the Assumption That 15 Percent of CMRS Total Revenue Is Derived From Interstate Revenues.**

Under the Commission's rules, all carriers providing interstate telecommunications are required to contribute to the federal Universal Service Fund ("USF") based on their interstate revenues.<sup>3</sup> The Commission issues quarterly contribution factors which carriers use to determine the amount they are required to pay into USF. To estimate each carrier's fair share of the total USF requirements, all carriers, including CMRS providers, must ascertain what percentage of their revenue is derived from interstate telecommunications.

In the wireline context, the determination of interstate traffic is not exceedingly complex, since the points of origination and termination of a wireline call are generally fixed and the numbering system of area codes and NXX codes generally correspond with specific wireline geographic areas. Significantly, CMRS operators cannot use this same wireline paradigm for discerning interstate from intrastate calls. Rather, current mobile telephony offerings are completely distinct from state borders in several respects: CMRS calling areas do not conform to state boundaries;<sup>4</sup> FCC licensing of CMRS systems on a BTA and MTA basis does not follow state boundaries; wireless numbers, due to a subscriber's mobility and roaming capability, do not

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<sup>3</sup> See, generally, 47 C.F.R. §§ 54.701-54.715.

<sup>4</sup> *Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, CC Dkt. 96-98, 11 FCC Rcd. 15499 (¶¶ 1036, 1043) (1996), *rev'd in part on other grounds*, *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *cert. granted*, 118 S. Ct. 879 (1998).

provide an accurate reference for estimating interstate/intrastate calling; CMRS systems are built to maximize technical efficiency and not to conform to state boundaries, and so there is no technical justification for building state-by-state systems; some base stations may serve more than one state, or a caller may move from one state to another in a single call, which would make it virtually impossible to accurately track interstate/intrastate calling and revenues. These attributes of CMRS systems are not new to the Commission, but they do present administrative complications with the implementation of broader telecommunications programs, such as USF.

In the FNPRM, the Commission requests comment on whether broadband PCS providers should be permitted to report 15 percent of their PCS revenues as interstate.<sup>5</sup> Omnipoint believes that adopting the current interim assumption, that interstate revenues account for 15 percent of a CMRS carrier's total revenue, would be fair and equitable as a means of ensuring that CMRS providers pay for their share of USF obligations. *First*, such a plan is economically efficient because it would reduce the carrier's administrative costs expended to determine what portion of their revenues were actually generated from interstate traffic on a quarterly basis. *Second*, an established percentage for all CMRS carriers would be fair and equitable because it ensures that consumers are not being overcharged for USF. As noted by the Commission, because wireless carriers traditionally do not distinguish between interstate and intrastate calling, wireless carriers in the same market currently report anywhere between 12 and 28 percent of their revenues as interstate.<sup>6</sup> *Third*, a set and uniform per-subscriber contribution rate will promote parity among CMRS providers, and ensure that competing CMRS carriers are paying into USF on an equitable

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<sup>5</sup> FNPRM at ¶ 20.

<sup>6</sup> FNPRM at ¶¶ 20, 21.

basis. *Fourth*, it would ease administrative burdens on the USF Administrator and the Commission, since noncompliance would be relatively easy to investigate and prosecute.

Similarly, Omnipoint notes that a fixed percentage will resolve other issues raised for comment in the FNPRM. This approach will alleviate the administrative and regulatory burdens to the Commission of having to determine interstate revenues on an MTA-by-MTA basis, as suggested by some carriers.<sup>7</sup> Requiring carriers to separate out their interstate charges differently for each MTA they provide services in would only provide further complication and increase administrative costs. Such an approach would require the Commission to launch 51 rulemaking proceedings to receive comments on the “appropriate” percentage of interstate calling in each MTA. This approach would also alleviate the need to come up with a specified percentage of roaming revenues that are interstate,<sup>8</sup> which would require further Commission rulemaking action. By adopting the interim guidelines as permanent, the Commission can put these issues to rest and carriers and the Commission can focus their efforts not on administrative requirements, but on providing competitive services to consumers.

Should the Commission adopt this approach, Omnipoint would support the Commission’s proposal that, if a CMRS carrier can affirmatively show that interstate revenues account for some amount other than 15 percent of total revenues, the carrier should be permitted, but not required, to use that figure as the basis for its universal service contribution.<sup>9</sup> As

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<sup>7</sup> FNPRM at ¶ 24.

<sup>8</sup> FNPRM at ¶ 33.

<sup>9</sup> FNPRM at ¶ 25.

competitive wireless services evolve and gain popularity, the Commission should allow carriers to account for changes in calling patterns that may occur.

**II. The Commission Should Ensure That States Certify Eligible CMRS Providers of Universal Service In a Competitively Neutral Manner.**

Much like the Commission should account for differences in USF funding, it should also require the State certification process to account for differences in service offerings provided by CMRS operators when determining which carriers are eligible to provide universal service. Omnipoint finds that, while CMRS providers are required to pay into USF, current Federal and State rules make it extremely difficult for wireless providers to offer universal service to rural and low cost areas.<sup>10</sup>

Sections 253 and 254 of the Communications Act of 1934, as amended (the "Act"), require both Federal and State universal service programs to be applied on a competitively neutral basis.<sup>11</sup> The Act further requires the Commission to preempt State or local government statutes, regulations, or legal requirements that either prohibit or have the effect of prohibiting an entity from providing interstate or intrastate telecommunications services, or that are not competitively neutral.<sup>12</sup> The Commission has noted that applying competitively neutral rules in the provisioning of universal service will promote emerging technologies that, over time, may

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<sup>10</sup> The Commission currently has a Petition For Preemption pending before it filed by Western Wireless Corporation, requesting that the Commission preempt certain Kansas statutes and rules that establish a universal service program that is not competitively neutral. *In the Matter of Western Wireless Corporation Petition for Preemption, Pursuant to Section 253 of the Communications Act, of Kansas Statutes and Rules that Discriminate Against New Entrants*, DA 98-1544, CWD 98-90.

<sup>11</sup> 47 U.S.C. §§ 253, 254.

<sup>12</sup> Id. at § 253(d).

provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers.<sup>13</sup>

One of the most important goals of the Act is to allow for competition in the local markets. When universal service programs function as roadblocks to facilities-based competition, the market is unlikely to transition out of its current monopoly environment. Non-technology neutral regulations and programs only serve to further the monopoly position held by wireline incumbent local exchange carriers. Although it has been almost three years since the passage of the pro-competitive amendments of the Telecommunications Act of 1996, the overwhelming majority of the local markets, especially rural markets, are still controlled by the incumbents.

Wireless providers are poised to offer real, facilities-based competition in the local markets. While competition between wireless and wireline services is still in a nascent stage, it will develop as the public perceives wireless services as an alternative or substitute to traditional landline services. The Commission must take affirmative steps to ensure that wireless providers have the same ability to provide universal service that is afforded wireline carriers. For example, some States require carriers to serve the entire State before becoming eligible to receive universal service funding. Because CMRS licenses do not follow State boundaries, rules of this type can prohibit CMRS carriers from providing universal service. By only allowing traditional wireline offerings to be eligible for universal service funding, the Commission and the States will preclude residents eligible for universal service from reaping the benefits of true competition in their local markets.

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In the Matter of Federal-State Joint Board On Universal Service, Report and Order, 12

*(footnote continued to next page)*



The Commission has already found that wireless services represent a workable means for bringing basic telephone services to rural areas. For example, the Commission has found that Basic Exchange Telephone Radio System ("BETRS") services could bring service to isolated areas at reasonable costs, and that such service was in the public interest.<sup>14</sup> Thus, wireless carriers may be the most efficient provider of services, and the least costly to the USF funding program in rural areas. The Commission must ensure that technology-neutral state rules and decisions are in place that do not deprive wireless providers from becoming universal service providers throughout the U.S.

Another example of the viability of wireless services for universal service to low income individuals is the advent of wireless prepay offerings, such as Omnipoint's "No-Fee Prepay (sm)" service. With this service, customers purchase a prepaid coupon and, as wireless services are used, the costs of such services are deducted from the balance of their prepay account. This service is similar to a prepay calling card, which includes a certain amount of usage and which is no longer usable once the funds are depleted. A customer's credit history is not even considered should they choose this service. Wireless prepay services support the universality of access to the Public Switched Telephone Network ("PSTN"), because traditional carriers with policies concerning customer credit histories often restrict or discourage low-income consumers from establishing telephone service of any kind. Additionally, the prepay option allows for easier consumer budgeting of expenses incurred for telephone service.

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FCC Rcd. 8776, 8803 (1997) ("Universal Service Order").

<sup>14</sup>

*In the Matter of Basic Exchange Telecommunications Radio Service, Notice of Proposed Rulemaking, 3 FCC Rcd. 326, 327 (1987).*

Innovative wireless services are available to low-income users in the non-rural portion of Omnipoint's current service areas. However, the non-technology neutral rules that exist in some States make it difficult for Omnipoint to launch this and other services to rural and low-income subscribers. By ensuring State regulations are competitively neutral, the Commission can ensure all telephone subscribers are afforded the full benefits of competitive and innovative telecommunications services.

**III. The Commission Should Remain Flexible In Determining Which CMRS Services Are Eligible For Universal Service Funding.**

Under the current rules, providers must offer each of the following services to be eligible to obtain universal service support: (1) access to the PSTN; (2) DTMF signaling;<sup>15</sup> (3) single party service; (4) access to emergency service, including E911, where available;<sup>16</sup> (5) access to operator service; (6) access to interexchange service; (7) access to directory service; and, (8) if the subscriber qualifies as a low income subscriber, toll limitation service. Additionally, the Commission has required that some minimum amount of local usage be included as part of a "basic service" package of supported services.<sup>17</sup> In Omnipoint's view, CMRS carriers should be eligible to receive USF support in order to compete with the traditional USF carriers and to offer

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<sup>15</sup> Wireless providers must provide an out-of-band digital signaling mechanism for call set up to meet this requirement.

<sup>16</sup> Wireless providers are only required to provide E911 service to the extent implemented by the relevant locality. If the locality has implemented an E911 system, a wireless provider may petition the State Public Utilities Commission to receive universal service support while upgrading its system to provide these services. As the Commission is aware, several Petitions for Rule Waiver are currently pending and a temporary waiver for such wireless Petitioners is in effect regarding the Phase I E911 implementation deadline. See Order, CC Dkt. No. 94-102, FCC 98-345 (rel. Dec. 31, 1998).

an improved set of mobile telephony products to subscribers living in rural and high cost areas. To achieve this goal, the Commission must articulate a set of flexible principles that allows CMRS operators to participate fully as eligible carriers under the USF programs.

In the FNPRM, the Commission requests comment on whether there should be some amount of minimum local usage included in a basic service package, and, if so, how to determine that local usage requirement, and what constitutes local usage for wireless providers.<sup>18</sup> Omnipoint believes that the Commission has largely addressed the issue of “local” in the context of reciprocal compensation, where the Commission found that any CMRS call originating and terminating within a given MTA is to be considered a “local” call.<sup>19</sup> If the Commission finds that it must limit USF subsidization to “local” CMRS calling, then a CMRS carrier’s calling plan which is not greater than MTA-wide calling should qualify for USF purposes.

Omnipoint urges the Commission, however, not to limit eligibility for USF support only to those CMRS service offerings that are a CMRS “local” calling plan. The Commission should allow the CMRS carrier to retain flexibility to determine which wireless service packages, supported by USF, would be available to subscribers, particularly in markets where the wireline carrier’s offering is also available to subscribers. In the Flexible Use Order, the Commission found that the public interest is best served by allowing CMRS providers to offer the widest array of services “to better respond to market demand and increase competition in the provision

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<sup>17</sup> Universal Service Order, 12 FCC Rcd. at 8813.

<sup>18</sup> FNPRM at ¶¶ 50, 53.

<sup>19</sup> See, n. 4, above; 47 C.F.R. § 51.701(a)(2).

of telecommunications services.”<sup>20</sup> Likewise, the Commission should avoid imposing a rigid set of guidelines to be followed by wireless carriers mandating which innovative services may be offered to subscribers in high cost/rural areas. Rather, the Commission should allow market forces to work. As noted in the Flexible Use Order, allowing flexibility in CMRS services will “stimulate wireless competition in the local exchange market, encourage innovation . . . and lead to a greater variety of service offerings to consumers.”<sup>21</sup> As one example, many CMRS operators now offer alternative wide-area calling plans that allow subscribers far more pricing flexibility and utility from their mobile telephones than is offered in the wireline context. Omnipoint believes the Commission should allow such wide-area plans to be eligible for USF funding because they provide subscribers with more innovative services than are available from the incumbent LECs and such plans are otherwise priced competitively.

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<sup>20</sup> *Amendment to the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8965, 8966 (1996)(“Flexible Use Order”).

<sup>21</sup> Id. at 8967.

#### IV. Conclusion

Omnipoint urges the Commission to take into consideration the unique structure and realities of the CMRS marketplace when determining how to allow CMRS carriers to meet their USF contributions, and which services CMRS carriers would be required to offer to be eligible for universal service support.

Respectfully Submitted,

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